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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,360	06/30/2003	Robert C. Gaydos	03224.0003U1	2659
23859	7590	03/25/2008	EXAMINER	
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			BAYARD, DJENANE M	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/611,360	GAYDOS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DJENANE M. BAYARD	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 January 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-7,10-20,22-26,29-39,41-45 and 48-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-7,10-20,22-26,29-39,41-45 and 48-57 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. This is in response to amendment filed on 6/14/07 in which claims 1-57 are pending.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 20 and 39 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3-5, 7, 10-12, 14, 18-20, 22-24, 26, 29-31, 33, 37-39, 41-43, 45, 48-50, 48-50, 52, 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2004/0123325 to Ellis et al in view of U.S. Patent Application No. 2005/0044166 to Colville et al.

a. As per claim 1, 20 and 39, Ellis et al teaches a method for handling content request and delivery, comprising the steps of: receiving at a headend (*network controller*) at least one request for content sent upstream from at least one user over a first network (See page 2, paragraph [0021 and 0024] and figure 1); sending the request for content upstream to a content library over a second network (See page 2, paragraph [0023], *upstream data from the set-top terminal to a headend is communicated via a reverse passband*); ; and processing the retrieved content for delivery downstream to the user (See page 2, paragraph [0021 and 0025], *downstream communication from headend to set-top terminal*). However, Ellis et al fails to teach receiving at the content server content retrieved from the content library, based on the request, and sent downstream from the content library over a third network wherein the third network is physically distinct from the second network and buffering at the content server the retrieved content for delivery downstream to the user and wherein the third network is physically distinct from the second network.

Kim et al teaches receiving at the content server content retrieved from the content library, based on the request, and sent downstream from the content library over a third network wherein the third network is physically distinct from the second network (See 2, paragraph [0033-0035]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim et al in the claimed invention of Ellis et al in order to allow a user to interact with the remote video server to control video delivery option (See paragraph [0008]).

Colville et al teaches buffering at the content server the retrieved content for delivery downstream to the user (See page 3, paragraph [0043-0045]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the buffering of the retrieved content reduces variations in a rate of delivery of the retrieved content to the user as taught by Colville et al in the claimed invention of Ellis et al in order to allow playback to be smooth on networks that have jitter or inconsistent bandwidth response (See page 4, paragraph [0048]).

b. As per claims 3, 22 and 41, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein the buffering of the retrieved content reduces variations in a rate of delivery of the retrieved content to the user.

Colville et al teaches a startup method and apparatus for use in streaming content. Furthermore, Colville et al teaches wherein the buffering of the retrieved content reduces variations in a rate of delivery of the retrieved content to the user (See page 4, paragraph [0048]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the buffering of the retrieved content reduces variations in a rate of delivery of the retrieved content to the user as taught by Colville et al in the claimed invention of Ellis et al in order to allow playback to be smooth on networks that have jitter or

inconsistent bandwidth response (See page 4, paragraph [0048]).

c. As per claims 4, 23 and 42, Ellis et al teaches the claimed invention as described above.

Furthermore, Ellis et al teaches sending the retrieved content downstream to the user over the first network (See page 2, paragraph [0019]).

d. As per claims 5, 24 and 43, Ellis et al teaches the claimed invention as described above.

However, Ellis et al fails to teach wherein the third network has high bandwidth for delivering content downstream from the content library compared to the bandwidth of the second network for sending requests upstream to the content library.

Colville et al teaches wherein the third network has high bandwidth for delivering content downstream from the content library compared to the bandwidth of the second network for sending requests upstream to the content library (See page 4, paragraph [0048]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the third network has high bandwidth for delivering content downstream from the content library compared to the bandwidth of the second network for sending requests upstream to the content library as taught by Colville et al in the claimed invention of Ellis et al in order to allow playback to be smooth on networks that have jitter or inconsistent bandwidth response (See page 4, paragraph [0048]).

e. As per claims 7, 26, and 45, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein the third network has high bandwidth for delivering

content downstream from the content library compared to the bandwidth of the second network for sending requests upstream to the content library.

Kim et al teaches wherein the third network has high bandwidth for delivering content downstream from the content library compared to the bandwidth of the second network for sending requests upstream to the content library (See paragraph [0008]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim et al in the claimed invention of Ellis et al in view of Colville et al in order to allow a user to interact with the remote video server to control video delivery option (See paragraph [0008]).

h. As per claims 10, 29 and 48, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein after an initial request for content is sent to the content library, the step of sending a request for content is repeated for subsequent requests.

Colville et al teaches wherein after an initial request for content is sent to the content library, the step of sending a request for content is repeated for subsequent requests (See page 4, paragraph [0048]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein after an initial request for content is sent to the content library, the step of sending a request for content is repeated for subsequent requests as taught by Colville et al in the claimed invention of Ellis et al in order to allow playback to be smooth on networks that have jitter or inconsistent bandwidth response (See page 4, paragraph [0048]).

i. As per claims 11, 30 and 49, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein if content is lost before being delivered downstream to the user, a request for the lost content is sent upstream to the content library along with a subsequent request for content.

Colville et al teaches wherein if content is lost before being delivered downstream to the user, a request for the lost content is sent upstream to the content library along with a subsequent request for content (See page 4, paragraph [0048])

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein if content is lost before being delivered downstream to the user, a request for the lost content is sent upstream to the content library along with a subsequent request for content as taught by Colville et al in the claimed invention of Ellis et al in order to allow playback to be smooth on networks that have jitter or inconsistent bandwidth response (See page 4, paragraph [0048]).

j. As per claims 12, 31 and 50, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein the step of sending a request for content is performed while content retrieved based on previously sent requests is received and processed.

Colville et al teaches wherein the step of sending a request for content is performed while content retrieved based on previously sent requests is received and processed (See page 4, paragraph [0048]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the step of sending a request for content is performed while content

retrieved based on previously sent requests is received and processed as taught by Colville et al in the claimed invention of Ellis et al in order to allow playback to be smooth on networks that have jitter or inconsistent bandwidth response (See page 4, paragraph [0048]).

e. As per claims 13, 32 and 51, Ellis et al teaches the claimed invention as described above. Furthermore, Ellis et al teaches wherein the requested content includes at least one of video data, audio data and binary large object data (See pages 1-2, paragraph [0016]).

k. As per claims 14, 33 and 52, Ellis et al teaches the claimed invention as described above. Furthermore, Ellis et al teaches wherein the user is associated with a content-on-demand subscriber (See page 1, paragraph [016]).

l. As per claims 18, 37 and 56, Ellis et al teaches the claimed invention as described above. Furthermore, Ellis et al teaches wherein the content retrieved from the content library is received as raw data, and the step of processing includes performing file system processing on the retrieved content (See Page 2, paragraph [0024]).

m. As per claims 19, 38 and 57, Ellis et al teaches the claimed invention as described above. Furthermore, Ellis et al teaches wherein the step of processing includes transforming the retrieved content into a format suitable for delivery to the user (See page 2, paragraph [0024 and 0031]).

5. Claims 6, 25 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2004/0123325 to Ellis et al in view of U.S. Patent Application No. 2005/0044166 to Colville et al and further in view of U.S. Patent Application No. 2002/0133830 to Kim et al as applied to claim 1 above, and further in view of U.S. Patent No. 5,828403 to DeRodeff et al.

a. As per claims 6, 25 and 44, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein the first network includes an RF network. DeRodeff et al teaches wherein the first network includes an RF network (See page 57-64).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the first network includes an RF network as taught by DeRodeff et al in the claimed invention of Ellis et al to carry analog and digital programs and applications (See col. 1, lines 57-64)

7. Claims 15-17, 34-36 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application No. 2004/0123325 to Ellis et al in view of U.S. Patent Application No. 2005/0044166 to Colville et al and further in view of U.S. Patent Application No. 2002/0133830 to Kim et al as applied to claims 1, 20 and 39 above, and further in view of U.S. Patent Application No. 2003/0140257 to Peterka et al.

a. As per claims 15, 34 and 53, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein the retrieved content received from the content library is in an encrypted form, and the step of processing includes decrypting the encrypted retrieved content.

Peterka et al teaches wherein the retrieved content received from the content library is in an encrypted form, and the step of processing includes decrypting the encrypted retrieved content (See page 3, paragraph [0031])

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the retrieved content received from the content library is in an encrypted form, and the step of processing includes decrypting the encrypted retrieved content in order to provide secure streaming or download of content from a content provider (See page 3, paragraph [0030]).

b. As per claims 16, 35 and 54, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein the step of sending the request for content includes sending authentication information to gain access to the content in the content library.

Peterka et al teaches wherein the step of sending the request for content includes sending authentication information to gain access to the content in the content library (See page 3, paragraph [0033])

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the step of sending the request for content includes sending

authentication information to gain access to the content in the content library in order to provide secure streaming or download of content from a content provider (See page 3, paragraph [0030]).

c. As per claims 17, 36 and 55, Ellis et al teaches the claimed invention as described above. However, Ellis et al fails to teach wherein the content library is associated with a content library server that performs file system processing on the content retrieved from the content library.

Peterka et al teaches wherein the content library is associated with a content library server that performs file system processing on the content retrieved from the content library (See page 3, paragraph [0035] and page 5, paragraph [0045]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the content library is associated with a content library server that performs file system processing on the content retrieved from the content library as taught by Peterka et al in the claimed invention of Brodigan in view of Schumacher et al in order to provide secure streaming or download of content from a content provider (See page 3, paragraph [0030]).

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Djenane Bayard

Patent Examiner

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2144